IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2359 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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THAKKAR SHANTILAL MOHANLAL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 2359 of 1990

MR BJ JADEJA for Petitioner No. 1

MR LR POOJARI, AGP for Respondent No. 1

MR CT MANIAR for Respondent No. 2-2/1,2/2-2/3

RULE SERVED for Respondent No. 2/1/1-2/1/4

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CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 06/02/2004

ORAL JUDGEMENT

#. The petitioner challenges the order of the Revenue

Tribunal made on 31.7.1989 in Appeal Ten. A.A. No. 51/85 dismissing the petitioner's appeal and upholding the order of the Collector made on 29th March, 1985 in suo motu revision application no. 1/84-85 by which the Collector set aside the order dated 31.5.1983 of the Assistant Collector, granting permission to the petitioner in respect of the sale transaction in question under the provisions of the second proviso to Section 54(1) of the Saurashtra Gharkhed, Tenancy Settlement & Agricultural Lands Ordinance, 1947, and revoking the certificate dated 29.4.83 issued by the Assistant Collector showing that the petitioner was having annual income of less than Rs. 5,000/-.

#. As per the certificate dated 29.4.1983, a copy of which is annexed at Annexure:A to the petition, the Assistant Collector, Dhangadhra had certified under Rule 18 read with Section 54 of the said Ordinance that the income of the petitioner did not exceed Rs. 5,000/-. It is evident from the certificate that pursuant to the application dated 30.11.1982 made by the petitioner for seeking such certificate, the Mamlatdar, Halwad, had forwarded that application with a recommendation to the Assistant Collector. The Assistant Collector on 26.4.1983 gave a personal hearing to the petitioner during which the petitioner produced his affidavit, stating that his income did not exceed Rs.5,000/-. He also gave a statement to the effect that he had experience of agricultural work and he would, on issuance of the certificate, acquire agricultural implements. In the certificate, a condition was imposed that such agricultural implements should be acquired by the petitioner within six months from the date of receipt of such certificate and that prior permission should be obtained before effecting any purchase of the agricultural land. Thereafter, the petitioner purchased agricultural land under the sale deed dated 15.6.1983 for which permission was obtained from the Assistant Collector, Dhangadhra on 31.5.1983. As per the order, a copy of which is at Annexure:B to the petition, that permission was given in the context of the certificate in which it was certified that the income of the petitioner did not exceed Rs. 5,000/-.

#. It appears that after a period of one year and four months from the date of the issuance of the certificate on the basis of which the petitioner already made purchase of the land in question on 15.6.1983, a show cause notice was issued in purported exercise of the revisional powers by the Collector, calling upon the petitioner as to why the certificate and the order should

not be held to be illegal on the ground that the income of the joint family of the petitioner was more than Rs. 5,000/-. The Collector in his revisional order observed that the petitioner did not adduce sufficient evidence in support of the fact that his income did not exceed Rs.5,000/-, in response to the show cause notice. It was noted that the petitioner was having a ration card for sugar. The Collector held that the income of the petitioner was more than Rs.5,000/- and, therefore, the permission was illegally granted to the petitioner in respect of the purchase made by him in respect of the land in question under Section-54 of the Act. The order granting permission as well as certificate were, therefore, revoked by the Collector on 29.5.1985.

#. The Tribunal, holding that action could be taken in reasonable time, rejected the contention of the petitioner that the exercise of suo motu revisional power was unwarranted in view of the delay in its exercise. The Tribunal referred to the observation of the Collector that there was no sufficient evidence to show that the annual income of the appellant no. 1 was less than Rs. 5,000/-. In para-9 of the order of the Tribunal, it has been stated thus: "The Collector has also observed that he is in possession of the ration card for sugar which shows that his income is below Rs. 5,000/-." It was observed that looking to the record of the Collector, there was no sufficient material to establish that the income of the petitioner was less than Rs. 5,000/-. The appeal, therefore, was dismissed by the Tribunal.

#. It is evident from the order of the Collector as well as appellate order of the Tribunal that they have not taken into consideration the positive evidence which was before the Assistant Collector in the form of the recommendation of the Mamlatdar, the affidavit of the petitioner and his statement, on the basis of which the certificate came to be issued by the Assistant Collector to the effect that the income of the petitioner did not exceed Rs. 5,000/-. The show cause notice dated 10.9.1984 was issued after a period of one year and four months after the grant of permission on the basis of which the sale deed came to be executed on 15.6.1983. As per the record, a sum of Rs. 5,000/- was invested in sinking a well in the land in question by the petitioner, who wanted to carry on agricultural operations for which he had purchased it. In the show cause notice, dated 10.9.1984, it was alleged that the permission under Section-54 of the said Ordinance could not be granted, because, a Hindu Undivided Family was included in the definition of "person" under Section-2(n) of the said

Ordinance. It was stated in the show cause notice that in this view of the matter, the entire income of the HUF should have been taken into consideration and not only the income of the petitioner, before granting the permission under Section-54 of the said Ordinance. Since no such details about the income of the HUF were furnished in this case under Section-54 of the Ordinance, the certificate and permission were illegally granted by the Assistant Collector. On these allegations, the petitioner was called upon to show cause as to why the certificate and the permission should not be cancelled in exercise of the revisional powers.

#. The finding of the Collector and the Tribunal that there was no sufficient evidence to show that the income of the petitioner was less than Rs. 5,000/-, has been rendered in the context of the allegation made in the show cause notice in which it was stated that there was no sufficient evidence adduced to show the income of the HUF which was included in the definition of "person" and that the entire income of the HUF was required to be considered. There is no specific finding either by the Collector or by the Tribunal about the income of the HUF, which obviously could not have been there, because, the evidence of the income of the HUF was wholly irrelevant in this case and the definition under Section 2(n) has been thoroughly misconstrued while issuing the show cause notice. Section 2(n) defines "person" so as to include an Undivided Hindu Family. Therefore, under the second proviso to Section-54 which lays down "provided further that no such permission shall be granted, where land is sold to a person who is not an agriculturist for agricultural purpose if the annual income of such person from other sources exceeds Rs. 5,000/-", the word "person" will have the meaning as per the said definition. In other words, even an Undivided Hindu Family would be considered as a "person" and when an application is made by an HUF, then it being a "person", the annual income of such HUF will have to be taken into account. However, when there is an application by an individual and not the HUF under section-54, his annual income alone is required to be considered for deciding whether it exceeded Rs. 5,000/-. Merely because the definition of "person" includes HUF, it cannot be held that in the annual income of an individual, the income of his HUF, if any, should also be included. There is no such clubbing of income of an individual and his HUF contemplated by the second proviso to Section 54(1) of the Ordinance. Therefore, when an application is made by an individual in his own capacity, his annual income alone was required to be taken into account for deciding

whether it exceeded Rs. 5,000/- under the second proviso to Section 54(1) and the income of the HUF cannot be added in his income. Therefore, the entire exercise started on the basis of the show cause notice dated 10.9.1984 was thoroughly misconceived and unwarranted, and initiated on an erroneous reading of the definition clause-2(n).

#. Even otherwise, there was no warrant for initiating such suo motu proceedings after the lapse of one year and four months from the date of the grant of the permission on the basis of which the petitioner purchased the land and had invested a considerable amount in sinking a well in it. The learned counsel, therefore, rightly relied upon the decision of the Supreme Court in the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, reported in (1997) 6 SCC, 71, in which, in the context of the sale of land which took place in December, 1972 and a suo motu inquiry was started in September, 1973, it was held that the suo motu revisional powers were not exercised in reasonable time.

#. For the foregoing reasons, the impugned decisions of the Tribunal and the Collector cannot be sustained and are hereby set aside, and, the certificate as well as the permission, copies of which are at Annexures:A & B stand restored. Rule is made absolute accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

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